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FIRMS TAKE ON PFOA LAWSUIT

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Times Union

Albany

Two companies that operated a manufacturing plant blamed for polluting water supplies in Hoosick Falls are seeking dismissal of a federal class-action lawsuit filed on behalf of the residents affected by the contamination.

The lawsuit, filed 11 months ago in U.S. District Court in Albany, seeks unspecified damages and long-term medical monitoring for current and former village residents who have high concentrations of a toxic chemical in their bodies, and also saw the value of their properties plummet as a result of the pollution.

Attorneys for Saint-Gobain Performance Plastics and Honeywell International contend the elevated levels of perfluorinated chemicals in the bloodstreams of the residents is a case of exposure, not injury, and that New York laws don't obligate the companies to pay for a medical monitoring program. The companies also are challenging whether they're responsible for the decline in property values in and around Hoosick Falls. The state owns the groundwater, they said, and the man-made manufacturing chemical, perfluorooctanoic acid, or PFOA, did not cause any structural damage when it flowed through water pipes.

"If you had kidney cancer, then you have a physical injury," Sheila L. Birnbaum, an attorney for Saint-Gobain, argued at a recent hearing in Albany before U.S. District Senior Judge Lawrence E. Kahn.

"The courts would be overwhelmed with cases in which people say I have been

exposed to a harmful chemical and, therefore, I have cellular changes and I'm entitled to medical monitoring," said Birnbaum, a New York City attorney often referred to as the "Queen of Torts" for her work in mass-tort litigation involving lawsuits filed against corporations. "If we allow this case in this instance, not only will the federal court be making new law that is contrary to New York law, but it would be opening the floodgates (to) thousands and thousands and thousands, millions of plaintiffs who have been exposed, (but) who have no present injury."

The federal lawsuit involves more than 20 attorneys from multiple law firms. In recent months, a tangle of legal arguments were filed as the companies seek an outright dismissal of the case. The plaintiffs' attorneys have countered that the chemicals in the bloodstreams of the residents constitute an injury and the pollution of their wells was an invasion of their right to clean drinking water.

"There is nothing more relevant to an invasion than drinking water entering into your home, into your pipes and coming out of the taps that you drink to sustain your life," Robin L. Greenwald, an attorney with Weitz & Luxemberg, one of the law firms leading the case, argued on behalf of the plaintiffs. "There's an invasion of your property with a chemical that is not yours."

Kahn, a former state Supreme Court justice who was appointed a federal judge in 1996, recently instructed both sides to stop filing legal arguments, saying he has enough information to decide the key pre-trial issues on injury and diminution of property values. Attorneys on both sides have argued that prior rulings by New York's Court of Appeals, which lay the foundation for the state laws that apply in the federal case, break in their favor. It will be up to Kahn to decide who's right.

The case is the region's largest class-action lawsuit on record involving environmental pollution. In Hoosick Falls, where several banks suspended property financing and declined to issue mortgages last year, the litigation represents a potential recovery for thousands of property owners who believe the values of their homes and businesses were diminished by the stigma caused by the pollution.

"Plaintiffs don't allege that PFOA caused any physical or structural damage to their wells, pipes, taps or showerheads and because they failed to plead any physical injury to their property, they cannot state a claim under New York law," Elissa J. Preheim, an

attorney for Honeywell, said in the recent hearing. She characterized the contaminated water as "a public resource held by the state."

In October, attorneys for the plaintiffs -- potentially several thousand residents of Hoosick Falls -- filed an amended federal complaint expanding their injury claim. That filing came after the state Health Department announced a blood-sampling program found many residents have PFOA in their bodies at levels more than 30 times the national average.

The plaintiffs' attorneys contend the accumulation of PFOA in the bodies of their clients, including children, will take years to dissipate and has increased the risks of serious diseases, including certain types of cancer. In addition to damages, the plaintiffs want the companies to pay for long-term biomonitoring that could provide early screening for some of the illnesses that have been linked to PFOA exposure.

Stephen G. Schwarz, an attorney for the plaintiffs, argued at the recent hearing that any disease someone develops from PFOA exposure is "a consequence of injury, not the injury itself."

Schwarz said the "toxic invasion" of PFOA puts the plaintiffs at increased risk of future illness. "That's what the remedy of medical monitoring is intended to do, to provide them with screening and early diagnosis and treatment."

The suit does not make a claim for bodily injuries but the state Health Department is examining assertions made by village residents that their community has elevated rates of cancer and other illnesses. PFOA exposure has been linked to increased health effects, including testicular and kidney cancer and thyroid disease.

Fourteen people, including two children exposed to PFOA in their drinking water for their entire lives, are listed as the plaintiffs in the class-action suit. They represent several thousand people who own property in and around Hoosick Falls or have consumed the contaminated water for a period of years.

Several of the named plaintiffs have levels of PFOA in their bodies significantly higher than the national average. They include Charles Carr, a homeowner whose private well had a PFOA level of 390 parts per trillion when it was tested last year, far above the advisory level of 70 ppt for a drinking water source established recently by the U.S. Environmental Protection Agency. Last spring, Carr gave a blood sample at the Hoosick Falls Armory with hundreds of other residents. The Health Department, which conducted the testing, later told him that he had PFOA in his system at a level of 186 parts per billion. The national average is 5 parts per billion and the median level among the Hoosick Falls residents whose blood was tested for PFOA was 64 parts per billion.

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Letter to Editor: HOOSICK FALLS MAYOR'S ACTIONS RAISE QUESTIONS

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Times Union

Hoosick Falls Mayor David Borge's interest in accepting a pittance settlement of \$850,000 that also formally passes the blame on to the two companies that tainted the water raises questions.

While there's no question the companies are to blame for the PFOA, the aftermath of misinformation of the risks seems to fall squarely on Borge and state Health Commissioner Dr. Howard Zucker, so it's understandable that Mayor Borge would like to expeditiously accept a settlement from the two companies, for fear of following in the footsteps of the criminal charges against officials in Flint, Mich.

The Flint officials failed to inform the public -- in other words, simply perform their job -- of the risks when they knew of the corrosive chemicals in the Flint River that dissolved lead into the drinking water above U.S. Environmental Protection Agency levels, analogous to the PFOA in Hoosick Falls water.

Hoosick Falls residents clearly have limited ability to resolve the water crisis with

confidence or ever have a viable means of selling their homes to move elsewhere. It baffles the norm that Borge would consider accepting so little when Hoosick Falls now has all the trimmings of a Superfund site, unless he was trying to avoid culpability. He knew or should have known better.

Rusty Bascom

Further PFOA testing to focus on site near Pownal town office

By JIM THERRIEN

Jan. 8, 2017

Bennington Banner

PFOA contamination was found in water tests on this former industrial parcel off Route 7 and North Pownal Road. Further testing of wells and other sites in the area is expected to begin soon.

POWNAL — Water testing for PFOA contamination near the Pownal town offices is expected to resume this month, while results from samples taken in North Pownal revealed some hot spots clustered around former Pownal Tanning Co. sites.

Trish Coppolino, Brownfields Program manager for the state Department of Environmental Conservation, said that monitoring well tests at a former Warren Wire Co. industrial site at the corner of Route 7 and North Pownal Road found elevated levels of PFOA (perfluorooctanoic acid).

Tests at five monitoring wells found PFOA levels of from 4.5 to 320 parts per trillion, she said. Vermont considers 20 parts per trillion the standard level for a health advisory.

Tests of surface water on the site showed a range of from 2.8 to 22 parts per trillion of PFOA.

The federal Environmental Protection Agency, which performed the initial monitor well tests and some soil testing for the state in August on the former industrial parcel, now will collect samples from about 20 selected sites around that acre-sized lot. The parcel is located across from the Pownal Valley Fire Department driveway and is now open land.

Coppolino said the testing will focus on the North Pownal Road, Center Street area. Property owners were notified of the pending sampling.

The good news, she said, is that tests of water at the town offices on Center Street, the Cozy Meadow Mobile Home Park across Route 7 from the site, and the Pownal Elementary School and the Oak Hill Children's Center further north off Route 7 did not detect PFOA contamination.

The former Warren Wire Co. site on Route 7 once worked with Teflon, Coppolino said, referring to a common source for PFOA. Warren Wire had its main plant on Route 346 in the town, and that parcel also is a suspected source of PFOA contamination, including at the well head for the nearby Pownal Fire District No. 2 and its approximately 450 water customers.

Tests of dozens of wells and monitoring wells emanating out from the main plant were taken last year after PFOA contamination was identified in the spring. The former factory is considered the likely source of PFOA in that area of town.

The fire district now has a temporary filtering plant installed beside the well head, and a search is in progress to locate another site for a new source well. The underwriting firm that has accepted responsibility for the former Warren Wire factory site on Route 346 has agreed to pay for certain costs associated with the filtering system, individual filtering at affected private wells in the area and initially for bottled water for residents.

The fire district water system does not extend to North Pownal village or to the Pownal Center locations around the town offices.

The Cozy Meadow park off Route 7 has its own water system, Coppolino said, and its source is to the east of Route 7 and was found to be unaffected by the contamination.

She also noted that wells around the town offices are for the most part deep, drilled wells, as opposed to the several shallow, dug wells found in North Pownal village. Having a deep well in bedrock could protect the groundwater, she said, if the contamination is closer to the surface.

NORTH POWNAL RESULTS

In North Pownal, a new set of test results was recently received by the state for private wells and other sites, mostly in the areas around the former Pownal Tanning Co. site. The razed mill was located at the intersection of Route 346 and Dean Road, alongside the Hoosic River.

Coppolino said the higher readings were found in the areas around the former tannery sludge lagoon site near the town waste water treatment plant, around the former factory site itself, and off Dean Road, where a landfill was created to accept lagoon wastes during a federal Superfund cleanup project in the late 1980s and early 1990s.

Coppolino said residents where those private wells were found to be contaminated were provided with bottled water until point-of-entry water treatment systems could be installed at those properties. She said most now have filters in place, while four households are still receiving bottled water.

In all, a total of 135 Pownal sites have been tested for PFOA, according to figures provided by the DEC. Of those, no PFOA was detected at 95 sites, less than 20 ppt was detected at 23 sites and more than 20 ppt was detected at 17 sites.

The highest readings were 66.2 ppt and 44.2 ppt, both on Route 346, and 39.7 ppt on Dean Road.

Thus far, Coppolino said, no potentially responsible party has been identified for the North Pownal village contamination. She said she has as yet not been able to determine whether any industrial activity at the former tannery might have involved PFOAs. In those cases, she said, the state is covering the water filtering and other costs associated with the contamination.

The federal government funded 90 percent of the Superfund cleanup for the site, and the state provided 10 percent and is responsible for continued operations and maintenance for the former tannery parcels.

She said that if any residents would like to request testing of a water supply, they should contact her at 802-249-5822, or patricia.coppolino@vermont.gov.

Jim Therrien writes for the Bennington Banner and VTDigger.org. He can be reached at 802-447-7567, ext. 114.

Vermont Federal Court Refuses to Stay PFOA Contamination Case in Light of Challenges to State Standards

January 6, 2017

Harris Martin Publishing

BURLINGTON, Vt. — A Vermont federal court has refused to stay a PFOA groundwater contamination class action lawsuit, saying that the defendant's challenges to state standards will not interfere with the underlying case since the standards "will not be necessary to adjudicate Plaintiffs' claims."

In the Dec. 28 ruling, the U.S. District Court for the District of Vermont found that the

resolution of the enforcement standard for PFOA concentrations will have “little bearing on resolution of Plaintiffs’ state-law tort claims.”

The plaintiffs filed the putative class action lawsuit against Saint-Gobain Performance Plastics Corp., contending that the defendant, and its predecessor ...

Federal court finds DuPont liable for \$10.5 million in PFOA cancer case

By Steve Toloken

Jan. 6, 2017

PN News

An Ohio federal court jury Jan. 5 found DuPont Co. liable for \$10.5 million in punitive damages to a man who claimed he developed testicular cancer from exposure to the fluoropolymer chemical PFOA after it got into local drinking water supplies from DuPont’s Parkersburg, W. Va., factory.

The award, to Kenneth Vigneron, is in one of the first among 3,500 cases to be heard before a special panel at the U.S. District Court in Columbus, Ohio. Last month, the same jury awarded Vigneron an additional \$2 million in compensatory damages.

Forty more trials are scheduled to start in May and last 12 months.

Advocates for local residents bringing the lawsuits said the Jan. 5 decision increases pressure on DuPont to reach a global settlement. But Chemours Co., a spinoff from DuPont that includes the fluoroproducts business, expects DuPont to appeal.

“We expect DuPont to appeal the verdict, subject to post-trial motions, to address important, unresolved issues that affect the broader, ongoing multi-district litigation,” said Mark Newman, senior vice president and chief financial officer of Chemours, in a Jan. 5 Securities and Exchange Commission filing.

“Litigation of this kind typically takes place over many years, and interim results do not predict the final outcome,” he said.

DuPont told Reuters news service that the company planned to appeal and believed the trial rulings misrepresented the science and misled jurors about the risks of exposure.

Keep Your Promises, an organization of local residents in affected communities, said the decision is the second time a jury has ruled against DuPont in PFOA contamination.

“As we look to the New Year, with 40 trials coming up in 2017 and pressure on DuPont to negotiate a global settlement, yet another punitive award, this time for Kenneth Vigneron, exponentially drives up the price tag of a settlement,” the group said.

The court, on its website, said there are 3,500 personal injury or wrongful death claims before the MDL panel, alleging harm from drinking water contaminated with perfluorooctanoic acid discharged from DuPont’s Washington Works facility outside Parkersburg.

The court’s website said the cases stem from a 2005 settlement between DuPont and 80,000 nearby residents who consumed local water supplies, and who allege they suffer from one or more of six diseases with a “probable link” to PFOA exposure.

Chemours said in its statement that of the 3,500 cases, the court’s multiyear litigation plan pertains to about 270 cases that claim cancer. It said the remaining cases, making up 93 percent of the docket and of which the majority allege high cholesterol and thyroid disease, are inactive.

Jury orders DuPont to pay \$10.5M more to cancer survivor

Gabriel Dunsmith, E&E News reporter

Published: Friday, January 6, 2017

A federal jury in Ohio ordered chemical giant DuPont to dole out \$10.5 million yesterday to a man who says his testicular cancer was caused by the company's pollution.

The fee comes in the form of punitive damages. A court had already ordered DuPont to pay the man \$2 million in compensation last month (Greenwire, Dec. 22, 2016).

The plaintiff, Kenneth Vigneron, lives near a DuPont factory in Parkersburg, W.Va., which sits on the Ohio border. The plant previously manufactured the compound perfluorooctanoic acid, also known as PFOA or C8, which has contaminated local water systems for decades. Vigneron claims he drank water laced with the compound.

Keep Your Promises DuPont, an advocacy group that works to expose the company's pollution in the Ohio Valley, praised the jury's decision.

"DuPont's decades-long, dangerous history with Teflon is finally starting to stick," said adviser Harold Bock, who lives near a company factory, in a statement. "With Kenneth's punitive damages award, two separate juries have now ruled that DuPont acted with malice and conscious disregard for mid-Ohio Valley residents in dumping C8 into our drinking water.

"We now know that not only was the company aware of the dangers of C8, but that they also knew the chemical was contaminating local drinking water at harmful levels," he continued. "Despite this knowledge, and the availability of cheap, alternative disposal methods, DuPont continued to poison surrounding communities, deny any harm and cover up the evidence."

PFOA was used to make Teflon, Gore-Tex and other manufactured goods until U.S. EPA discovered that DuPont had withheld information on the chemical's health risks. DuPont and other manufacturers agreed to cease production of PFOA by the end of 2015 under a 2009 EPA phaseout plan (Greenwire, May 1, 2015).

Exposure to PFOA is linked to thyroid disease, high cholesterol, liver damage, and kidney and testicular cancers.

And the compound is a prolific drinking water contaminant. The Environmental Working Group, a nonprofit, claims that 94 public water systems across 27 states contain PFOA.

DuPont promised to appeal the ruling.

"We are disappointed in the verdict, which we will appeal," the company said in a statement. "We believe the verdict was the result of trial rulings that misrepresented the findings of an independent science panel and misled jurors about the risks of C8 exposure."

DuPont faces over 3,500 other lawsuits from individuals over PFOA-linked illnesses.

The company asserts on its website that it "always acted responsibly based on the health and environmental information that was available to the industry and regulators about PFOA at the time of its usage."